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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/828,579
Filing Date: April 02, 2001
Appellant(s): SHEALY, ALAN R.

Richard M. Moose
For Appellant

EXAMINER'S ANSWER

MAILED

OCT 20 2005

GROUP 3600

This is in response to the appeal brief filed 1/10/2005 appealing from the Office action mailed 2/10/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 9, 11, 14, 16 and 19 are unpatentable under 35 U.S.C. 102(e) as being anticipated by Ehlers et al. (US 5,924,486).

Ehlers et al. (Ehler) teaches a method, system and computer-readable medium for environmental condition control and energy management, comprising:

Independent Claims

As per claims 1, 6, 11 and 16,

identifying that a future rate plan is to be changed (*If the energy unit supplier projects a future oversold condition based on future usage predictions, the supplier ... will have the ability to raise the price of the energy. An energy price increase may result in a communication to all potential purchasers of the energy units for upcoming time periods that a price change has occurred, causing the individual premise systems to recompute their economic models and either remain committed to the provider and the new price per energy unit, curtail usage or switch to another energy unit provider*

C. 23,

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L. 28-38. Furthermore, Ehlers teaches that said rates and start time for each rate are entered by the user C. 27, L. 66 – C. 28, L. 2; and scheduling HVAC operation based on when rates changes C. 29, L. 6-7);

selecting the future rate plan desired (a *user is prompted to enter a desired rate and start time for each rate* C. 27, L. 66 – C. 28, L. 2; *said selection is conducted from the rate tables which embody any type of pricing structures such as flat rate, time of day, price tiers, etc.* C. 9, L. 47-49);

implementing the future rate change (*operating HVAC based on schedule which is determined based on when rates changes* C. 29, L. 6-7); and

selecting the effective date of the future rate plan (*entering start time for each rate by a user* C. 27, L. 66 – C. 28, L. 2).

Dependent Claims

As per **claims 9, 14 and 19**,

selecting the effective date of the future rate plan (*entering start time for each rate by a user* C. 27, L. 66 – C. 28, L. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 7-8, 10, 12-13, 15, 17-18 and 20 are unpatentable under 35 U.S.C.

103(a) over Ehlers et al.

Dependent Claims

As per **claims 2, 7, 12 and 17**, Ehlers teaches said method, system and computer readable medium, comprising selecting a desired date and duration of new plan (C. 27, L. 66 – C. 28, L. 2).

Ehlers does not explicitly teach determining if the future rate change is a single plan change.

Official notice is taken that it is well known that utility service providers have various plans for different groups of customers (For example, Ehlers teaches that energy providers provide its rate tables which embody any type of pricing structures such as flat rate, time of day, price tiers, etc. C. 9, L. 42-49).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers to include that said future rate change is a single plan change, because it would advantageously allow utility providers to attract customers to more profitable plan, thereby obtaining the maximum benefit for the utility bill payer and the utility (Ehlers, C. 21, L. 14-15).

As per **claims 3, 8, 13 and 18**, Ehlers teaches said method, system and computer-readable medium, wherein the consistency of usage rate of the appliances is considered (verifying feature) for estimation of future time period rate (C. 20, L. 36-50).

Ehlers does not specifically teach that said consistency is considered (verified) if the future rate change is the single plan change.

Official notice is taken that it is well known that utility service providers have various plans for different groups of customers (For example, Ehlers teaches that energy providers provide its rate tables which embody any type of pricing structures such as flat rate, time of day, price tiers, etc. C. 9, L. 42-49).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers to include that said consistency is considered (verified) if the future rate change is the single plan change, because it would advantageously allow utility providers to estimate future energy unit needs, costs, and identify unusual or abnormal consumption patterns (Ehlers, C. 21, L. 22-23).

As per **claim 4**, Ehlers teaches said method and system, comprising selecting the effective date of the future rate plan (C. 27, L. 66 – C. 28, L. 2).

As per **claims 5, 10, 15 and 20**, Ehlers teaches said method, system and computer-readable medium, comprising selecting the first day of a next billing cycle (C. 11, L. 22 – C. 12, L. 4; C. 27, L. 66 – C. 28, L. 4).

Ehlers does not specifically teach that said selecting is conducted if the future rate change is not a single plan change.

Official notice is taken that it is well known that utility service providers have various plans for different groups of customers (For example, Ehlers teaches that energy providers provide its rate tables which embody any type of pricing structures such as flat rate, time of day, price tiers, etc. C. 9, L. 42-49).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers to include that said selecting is

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conducted if the future rate change is not a single plan change, because it would advantageously allow to provide convenience to the customers, thereby enhance customer service.

9) Response to Arguments

**Group I. Claim Rejections Under 35 U.S.C. §112, second paragraph,
regarding Claims 11-15.**

The examiner has withdrawn the Claim rejections Under 35 U.S.C. §112, second paragraph, regarding Claims 11-15. Therefore, the argument is moot.

**Group II. Claim Rejections Under 35 U.S.C. §101,
regarding Claims 6-10.**

The examiner has withdrawn the Claim rejections Under 35 U.S.C. §101 regarding Claims 6-10. Therefore, the argument is moot.

**Group III. Claim Rejections Under 35 U.S.C. §102(e),
regarding Claims 1, 6, 9, 11 and 19.**

In response to Applicant's argument that Ehlers fails to disclose billing system, the examiner stipulates that Ehlers explicitly teaches this feature. In fact, Ehlers's patent

discloses a method and system for providing specific utility services and billing users for services rendered. Specifically, Ehlers teaches: "*The communications channel also may be used to update the debit account balance for an energy supplier based on payments by the occupant or bill payer. [FIG. 3 feature of AUTOMATIC COST ACCOUNTING.]*" (C. 23, L. 24-28).

In response to Applicant's argument that Ehlers fails to disclose future rate changes, it is noted that Ehlers explicitly teaches said feature. Specifically, Ehlers provides examples of circumstances when the user indicates said future rate changes and the time of said rate changes could take place in the future: "*If the energy unit supplier projects a future oversold condition based on future usage predictions, the supplier ... will have the ability to raise the price of the energy. An energy price increase may result in a communication to all potential purchasers of the energy units for upcoming time periods that a price change has occurred, causing the individual premise systems to re-compute their economic models and either remain committed to the provider and the new price per energy unit, curtail usage or switch to another energy unit provider*" C. 23, L. 28-38. Furthermore, Ehlers teaches that *said rates and start time for each rate are entered by the user* C. 27, L. 66 – C. 28, L. 2; and *scheduling HVAC operation based on when rates changes* C. 29, L. 6-7.

In response to applicant's argument that Ehlers fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the

user is on the supplier side) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

**Group IV. Claim Rejections Under 35 U.S.C. §103(a),
regarding Claims 2-5, 7-8, 10, 12-13, 15, 17-18 and 20.**

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the motivation to modify Ehlers to suggest a certain plan would be to allow utility providers to attract customers to more profitable plan thereby obtaining the maximum benefit for the utility bill payer and the utility, is provided in Ehlers (C. 21, L. 14-15).

As per providing support for the Official notice regarding providing a certain payment plan, it is noted that Ehlers explicitly teaches that energy providers provide its

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rate tables which embody any type of pricing structures such as flat rate, time of day, price tiers, etc.(C. 9, L. 42-49).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Igor Borissov



IB

October 14, 2005

Conferees:

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Thomas Dixon *✓* *10/17/05*

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